XI-HC—78

(18)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. 724/07 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

APPELLANT/ (Accused) (In Jail) : Heera Chand, aged 30 years, S/o Dauram, R/o village Beladula, Police Station Jaijaipur, Distt. Janjgir-Champa (CG).

-Versus-

RESPONDENT : State of Chhattisgarh, Through the District Magistrate, Janjgir-Champa (CG).

(Criminal Appeal under Section 374(2) of the Cr.P.C.)

Division Bench :

Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Sunil Kumar Sinha, JJ

26-10-2007

Heard Shri Ravindra Agrawal, counsel for the appellant & Shri Akhil Mishra, Panel Lawyer for the State/respondent.

Today this appeal has been listed for orders on admission and for suspension of sentence & grant of bail to the appellant, during pendency of the appeal.

During the course of arguments, it was noticed that in this case all eyewitnesses have turned hostile, therefore, with the consent of learned counsel for the parties, it is decided to hear the appeal for final disposal.

Oral judgment dictated on *dais*.

L.C. Bhadoo, J

This appeal is directed against the judgment of conviction and order of sentence dated 26-6-2007 passed by the Additional Sessions Judge, Janjgir, in Sessions Trial No.152/2006 whereby learned Additional Sessions Judge after

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holding the accused/appellant guilty for commission of offence under Section 302 of the Indian Penal Code for committing the murder of his mother namely, Khikhi Bai, sentenced him to undergo imprisonment for life & to pay a fine of Rs.200/-, in default of payment of fine to further undergo R.I. for one month.

2) Case of the prosecution, in brief, is that Khikhi Bai (since deceased) was the mother of accused/appellant namely, Heera Chand. On 11-3-2006, the accused/appellant was taken for treatment to Bamhanibana Ashram, Akaltara. On 14-3-2006, the accused was sitting covering his body with shawl. Seeing this deceased asked him as the sun has already risen, therefore, he should remove the shawl and work with the persons working in the Ashram, which enraged the accused and said that he will not work. He is being asked to work, but he will not work and He has been brought here against his wishes. He picked up a wooden plank lying at the spot and attacked with that wooden plank repeatedly 3-4 times on the head of his mother, as a result of which Khikhi Bai became unconscious and fell down. She was taken to Akaltara Hospital by boys of Ashram namely, Naresh & Anil and brother of accused namely, Krishna Chand. After giving first aid, she was referred to CIMS, Bilaspur, where she was admitted and ultimately she succumbed to the injuries on 18-3-2006. Merg intimation (Ex.P/3) was sent to the out post Police Station City Kotwali, through Ward Boy and same was recorded by the out post In-charge under Ex.P/10 and was sent to Police Station Akaltara with Ex.P/11. Dehati Nalishi Ex.P/12 was given by Krishna Chand to out post City Kotwali, CIMS. Based on that First Information Report (Ex.P/13) was registered. The Investigating Officer after giving notice (Ex.P/1) to the Panchas, prepared inquest (Ex.P/2) on the body of deceased Khikhi Bai. Site plan (Ex.P/6) of the

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place of occurrence was prepared by the Patwari. Postmortem was conducted on the body of deceased in CIMS, Bilaspur by Dr. Mahesh Rawat Rai (PW-11). He opined that the cause of death was coma, as a result of both intracranial and extradural hemorrhage. Postmortem report is Ex.P/16.

3) After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Janjgir, who in turn committed the case to the Court of Sessions Judge, Bilaspur, from where learned Additional Sessions Judge, Janjgir, received the same on transfer for trial.

4) In order to establish the charge against the accused person, the prosecution examined 14 witnesses. Statement of the accused person was recorded under Section 313 of the Code of Criminal Procedure in which he denied the material appearing against him in the prosecution evidence and pleaded innocence.

5) Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as aforementioned.

6) We have heard Shri Ravindra Agrawal, learned counsel for the appellant and Shri Akhil Mishra, Panel Lawyer for the State.

7) In this case the eyewitness namely, Kirshna Chand (PW-10), who lodged the Dehati Nalishi (Ex.P/12) has turned hostile. He is the brother of the accused and son of the deceased. He stated that Dehati Nalishi (Ex.P/12) was not given by him. PW-5 Radha Bai, the other eyewitness, has also turned

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hostile and she has not supported the prosecution case. PW-6 Anil Joshi has stated that Krishna Chand (PW-10) informed him about the offence committed by the accused, whereas Krishna Chand (PW-10) has turned hostile. There is no other eyewitness to the incident. Even the FSL report is also not filed in this case & tendered into evidence.

8) Therefore, in this case there is no ocular or circumstantial evidence to connect the accused with the crime in question. Learned Additional Sessions Judge has convicted the appellant without any legal evidence, therefore, the judgment of trial Court convicting & sentencing the accused cannot be sustained.

9) In the result, the appeal succeeds. Conviction and sentence imposed upon the appellant under Section 302 of the Indian Penal Code are set aside. He is acquitted of the said charge. He be set at liberty forthwith unless required to be detained in any other case.

10) Consequently, I.A.No.1, application for suspension of sentence and grant of bail stands disposed of.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Sunil Kumar Sinha
Judge